

Heera Lal & Ors. vs. Bahnwar Lal

SB Civil 1st Appeal No.98/1988

Date of Judgment:

15th March, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Jagdish Vyas for the appellants.

Mr.Rameshwar Chouhan for the respondents.

Heard learned counsel for the parties.

This appeal is filed against the judgment and decree dated 10th May 1988 in civil suit No.144/1988 whereby the District & Sessions Judge , Udaipur dismissed the suit.

The case of the plaintiff as set up in the suit was that his father Modji owned three properties numbered as property No.1, 2 and 3. Out of these three properties, property No.1 was alleged to be in possession of defendant Bhanwar Lal. Property No.3 was alleged to be in possession of plaintiff Heeralal and Property No. 2 was under a mortgage .

The case of the plaintiff was that property No.3, a plot, was given by his father to him for constructing a house in the year 1955. He, accordingly, constructed that house. According to the plaintiff, all the three properties i.e. Property No.1, 2 and 3 were the self acquired property of his father, and, therefore, all co-parceners had defined rights and the plaintiff is entitled to a share as claimed by him in the plaint. The defendant contested the suit of the plaintiff and said that in the year 1954 the property was divided by the father. Plot No.3 was given to the plaintiff which was then not a plain plot but a house constructed of Kelu. Property No.1 was given to defendant and property No.2 remained under mortgage. All the three properties were not self earned properties of the father but were ancestral properties. Therefore, the father of the petitioner had the right in his life time to make a division of the property. On the basis of the pleading of the parties, following issues were framed :-

- “1- क्या वादी को वादग्रस्त मकान का पाती बँटवाड़ा कराने का अधिकार है?
- 2- क्या वादग्रस्त सम्पत्ति में वादी नं. दो व तीन का कोई हिस्सा है?

3- क्या वाद पत्र की क्रम संख्या एक व दो में वर्णित मकानात में वादी एवं प्रतिवादी का बराबर का हिस्सा और क्रम संख्या 3 में वर्णित मकान में केवल तलिये में प्रतिवादी नं. 1 का आधा हिस्सा है?

4- क्या वाद की क्रम संख्या-11 में वर्णित सम्पति प्रतिवादी नं. 1 के कब्जे में है।

5- क्या मोडीराम जी ने अपने जीवनकाल में वादग्रस्त मकानात का जबानी बाँटवाड़ा सन् 1954 में कर दिया ?

6- क्या वादी संख्या एक व प्रतिवादी न.1 के माता पिता की अन्तयेष्टि आदि का खर्चा प्रतिवादी नम्बर-1 ने किया और इसका दावे पर क्या असर है ?

6-ए- मोडीराम की पुत्री जेतकी व बख्तावरी की मृत्यु कब हुई ?

7- प्रतिकार क्या है ?”

The trial court, while deciding issues No.1, 2, 3 and 5, came to the conclusion that the property is ancestral and there was a division effected by the father in 1954. Property No.1 was given in

the share of plaintiff No.1. Property No.3 was given to defendant and on the basis of that it was held that in house No.1 the plaintiff has no share, which is capable of being divided. Thus, substantially the case of the plaintiff was negated by the trial court while deciding issue Nos.1, 2, 3 and 5.

The trial court came to the conclusion, regarding property No.2, that it is under mortgage with defendant No.2 Dariya Bai and that as and when the same is redeemed, plaintiff No.1,2,3 and defendant No.1, will have 1/4th share each in it.

The learned counsel for the appellant, assailing the judgment, said that the trial court has not seriously taken note of the notices given by the father Modji, wherein he has said that defendant No.1 Bhanwar Lal is not maintaining him and his wife and, therefore, he will take action against him. Reply to this notice has also not been considered by the trial court. The language of the notice, according to the learned counsel for the appellant, shows that there was no division as claimed by defendant No.1. If there was no division as claimed by defendant No.1, then the suit was liable to be decreed.

Per contra, the learned counsel for the defendant submitted that even according to the best case of the plaintiff, he constructed the house on plot No.1 and he has not considered that this house is also liable to be partitioned, according to the case set up by him. House constructed on this plot by plaintiff, has been claimed to be his property. This part of the claim of plaintiff dis-entitles him to say that there was no division as claimed by defendant because as and when there is a co-parcenary property and any one invest any money on it, that goes in co-parcenary and that becomes a part of hotchpotch and no one can claim exclusive right on it.

Apart from the reasoning given by the trial court, the learned counsel for the defendant claimed that the conduct claiming exclusive rights on a part of property and then claiming division of the property, shows that he is trying to set up a proposition which is against law.

I have heard the learned counsel for the parties and have given my thoughtful consideration and I am of the considered opinion that once the property is in exclusive possession of the plaintiff Heeralal and he even constructed a house on it with his own money, then what can be understood in that common

parallence is that he did so for his own benefit. This was done when his father had effectedd the division. Had it not been so, the house constructed by Heeralal should have also have been the subject matter of claim for division. Plaintiff Heeralal avoided that and that avoidance shows the conduct of Heeralal. His saying that the plot alone was subject to division, cannot be accepted because on a co-parcenary property if any investment is made, that goes to the co-parcenery and not to any individual.

The conduct of Heeralal and the evidence relied on by the trial court , oral and documentary, clearly establish that there was a division of the family property in 1954. That being the position the suit of the plaintiff appellant was rightly dismissed, qua property No.1 and 3 and holding that they have already been subjected to a division and shared by the two brothers.

As regards property No.2 , parties have not claimed any thing better than what the trial court has awarded . Parties are entitled to the benefit under the Hindu Law and in that view of the matter, the findings of the trial court are not liable to be disturbed .

This Court is of the view that the suit of the plaintiff has

rightly been dismissed by the trial court qua property No.1 and No.3. Property No.2 has been subjected to division in view of the provisions of Hindu Law.

Therefore, the judgment and decree is not liable to be interfered and consequently the appeal fails and the judgment and decree of the trial court is upheld.

(BHAGWATI PRASAD), J.